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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/549,422	09/15/2005	Jose Luiz Whitaker Ribeiro	CSI1.004	9467
3775	7590	04/04/2008	EXAMINER	
ELMAN TECHNOLOGY LAW, P.C.			DREIDAME, HUNTER M	
P. O. BOX 209				
SWARTHMORE, PA 19081			ART UNIT	PAPER NUMBER
			3633	
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			04/04/2008	PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/549,422	RIBEIRO, JOSE LUIZ WHITAKER	
	<b>Examiner</b>	<b>Art Unit</b>	
	HUNTER M. DREIDAME	3633	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 15 September 2005.
- 2a) This action is **FINAL**.                                   2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1-18 is/are pending in the application.
  - 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 1-18 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on 15 September 2005 is/are: a) accepted or b) objected to by the Examiner.
 

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
  - a) All    b) Some \* c) None of:
    1. Certified copies of the priority documents have been received.
    2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
    3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)	4) <input type="checkbox"/> Interview Summary (PTO-413)
2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)	Paper No(s)/Mail Date. _____ .
3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)	5) <input type="checkbox"/> Notice of Informal Patent Application
Paper No(s)/Mail Date <u>9/15/2005</u> .	6) <input type="checkbox"/> Other: _____ .

## **DETAILED ACTION**

### ***Information Disclosure Statement***

The listing of references in the specification is not a proper information disclosure statement. 37 CFR 1.98(b) requires a list of all patents, publications, or other information submitted for consideration by the Office, and MPEP § 609.04(a) states, "the list may not be incorporated into the specification but must be submitted in a separate paper." Therefore, unless the references have been cited by the examiner on form PTO-892, they have not been considered.

The information disclosure statement filed 15 September 2005 fails to comply with 37 CFR 1.98(a)(2), which requires a legible copy of each cited foreign patent document; each non-patent literature publication or that portion which caused it to be listed; and all other information or that portion which caused it to be listed. It has been placed in the application file, but the information referred to therein has not been considered.

### ***Drawings***

New corrected drawings in compliance with 37 CFR 1.121(d) are required in this application because The figure numbers and reference numbers in the Drawings do not all correspond correctly to the figure numbers and reference numbers in the Specification. Applicant is advised to employ the services of a competent patent draftsperson outside the Office, as the U.S. Patent and Trademark Office no longer prepares new drawings. The corrected drawings are required in reply to the Office

action to avoid abandonment of the application. The requirement for corrected drawings will not be held in abeyance.

Figures 1-5 should be designated by a legend such as --Prior Art-- because only that which is old is illustrated. See MPEP § 608.02(g). Corrected drawings in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. The replacement sheet(s) should be labeled "Replacement Sheet" in the page header (as per 37 CFR 1.84(c)) so as not to obstruct any portion of the drawing figures. If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

***Specification***

The disclosure is objected to because of the following informalities: 35 U.S.C. 112, first paragraph, requires the specification to be written in "full, clear, concise, and exact terms." The specification is replete with terms which are not clear, concise and exact. The specification should be revised carefully in order to comply with 35 U.S.C. 112, first paragraph. Examples of some unclear, inexact or verbose terms used in the specification are:

Page 1, line 5, should be changed from "construction of pool" to --construction of pools--;

Page 1, lines 31-32, should be changed from "and can they have their dimensions" to --cannot have their dimensions--;

Page 2, line 8, should be changed from "The above mentioned inconveniences" to --The above mentioned inconveniences--.

Furthermore, the specification is replete with errors corresponding to the Drawing figure numbers and reference numbers. The Specification should be thoroughly revised to ensure that all inconsistencies in figure numbers and reference numbers are eliminated. Examples of some inconsistencies are:

Page 6, lines 26-28, refer to the pool 10 in Figure 6; however, only the pool of the prior art is labeled as 10. The applicant should likewise label the pool of Figure 6.

Page 7, line 25, through page 8, line 3, refers to Figs. 7a-7d as showing example assortments of different height side panels; however, the corresponding figures of the Drawings are labeled as Figs. 7-10.

Figure 14 of the Drawings is not mentioned in the Specification.

Appropriate correction is required.

### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1-18 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 1 recites the limitation "whose walls" in line 1. There is insufficient antecedent basis for this limitation in the claim.

Claim 14 recites the limitation "the bottom's support structure sleepers" in line 1.

There is insufficient antecedent basis for this limitation in the claim.

Claim 15 recites the limitation "above mentioned beams" in line 2. There is insufficient antecedent basis for this limitation in the claim.

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

**Claims 1-2, 4-9, 13-14, and 16-17 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. patent 2,490,272 to Kascle.**

**As to claim 1**, Kascle discloses a modular pool constructive design (Fig. 1), whose walls are constituted by metallic panels (7), characterized by the fact of comprising a bottom (5) including a structure (48, 49) that supports a plurality of equally metallic tiles (5), the said walls being connected to said bottom's structure (Fig. 2), making up a unique and non-deformable structure and for all the pool's elements are interlinked by semi-permanent connecting (bolts, 36).

**As to claim 2**, Kascle discloses that the panels are steel sheets (7); however, it should be noted that claim is considered a product-by-process claim, therefore,

determination of patentability is based on the product itself. See MPEP 2113. The patentability of the product does not depend on its method of production. If the product-by-process claim is the same as or obvious from a product of the same prior art, the claim is unpatentable even though the prior product was made by a different process.

*In re Thorpe*, 777 F.2d 695, 698, 227 USPQ 964, 966 (Fed.Cir.1985)

**As to claim 4**, Kascle discloses the modular pool constructive design, according to claim 1, characterized by the fact that said bottom has a support structure made up by beams (49) are interlinked by semi-permanent connecting elements means (36).

**As to claim 5**, Kascle discloses the modular pool constructive design, according to claim 4, characterized by the fact that said support structure is comprised by a set of sleepers (48) laid in parallel and a set of crossbeams (49) placed at a right angle in relation to said sleepers.

**As to claim 6**, Kascle discloses the modular pool constructive design, according to claim 4 characterized by the fact that the beams that make up the support structure are comprised by steel sheets folded into a 'U" shape (shown in Fig. 2).

**As to claim 7**, Kascle discloses the modular pool constructive design, according to claim 1, characterized by the fact that said support comprises semi-permanent connecting means (Fig. 2) with the pool's walls.

**As to claim 8**, Kascle discloses the modular pool constructive design, according to claim 7, characterized by the fact that said connecting means are comprised by angle iron type beams (47) whose vertical rims are joined to said support structure perimeter

beams and whose horizontal rims provide the support and the connecting means of the walls' module lower panel rims.

**As to claim 9,** Kascle discloses the modular pool constructive design, according to claim 8, characterized by the fact that said connecting means comprise through holes (34) on the said angle iron beam horizontal rim aligned with the corresponding holes in the lower rim (6) of the wall's lower panel.

**As to claim 13,** Kascle discloses the modular pool constructive design, according to claim 1, characterized by the fact that tiles (26, 27) are provided with a central opening for the bottom's drain.

**As to claim 14,** Kascle discloses the modular pool constructive design, according to claim 1, characterized by the fact that the bottom's support structure sleepers are provided by joining various length top beams (47).

**As to claim 16,** Kascle discloses the modular pool constructive design, according to claim 1, characterized by the fact that the semi-permanent connecting means of the pool's elements are provided by screws and nuts (36).

**As to claim 17,** Kascle discloses the modular pool constructive design, according to claim 5, characterized by the fact that the beams the make up the support structure are comprised by steel sheets folded into a 'U" shape (shown in Fig. 2).

#### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

**Claim 15 is rejected under 35 U.S.C. 103(a) as being unpatentable over U.S.**

**Patent 2,490,272 to Kascle.**

**As to claim 15,** Kascle discloses the claimed invention except for the size of the beams. It would have been a matter of obvious design choice to make the beams larger or smaller, as such a modification would have involved a mere change in size of a component. A change in size is generally recognized as being with the level of ordinary skill in the art. *In re Rose*, 105 USPQ237 (CCPA 1955).

**Claims 3, 10-12 and 18 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent 2,490,272 to Kascle in view of U.S. Patent 4,177,614 to Arp.**

**As to claim 3,** Kascle discloses the modular pool constructive design, according to claim 1.

Kascle does not disclose that the pool is characterized by the fact that piling side panels of various heights forms the walls, said panels have the same horizontal dimension.

Arp discloses a swimming pool wall (Fig. 5) characterized by the fact that piling side panels (16, 40) of various heights forms the walls, said panels having the same horizontal dimension.

In view of Arp, it would have been obvious to one having ordinary skill in the art at the time the invention was made to have formed the walls of Kascle with the stacked panels of Arp as a means of making the pool deeper or varying the depth.

**As to claim 10,** Kascle discloses the modular constructive pool design, according to claim 2.

Kascle doesn't disclose a pool characterized by the fact that each wall panel comprises a rectangular shaped central portion and a rim along each of both horizontal sides of said central portion and bent at right angles in relation to the latter.

Arp discloses a pool characterized by the fact that each wall panel comprises a rectangular shaped central portion (16) and a rim (17, 18) along each of both horizontal sides of said central portion and bent at right angles in relation to the latter.

In view of Arp, it would have been obvious to one having ordinary skill in the art at the time the invention was made to have formed the walls of Kascle with the stacked panels of Arp as a means of making the pool deeper or varying the depth.

**As to claim 11,** Kascle, in view of Arp, discloses the modular pool construction design, according to claim 10, characterized by the fact that each wall panel additionally comprises a rim (19, 20, Fig. 3) along at least one of the vertical sides of said central portion; said rim bent at a right angle in relation to said central portion.

**As to claim 12,** Kascle, in view of Arp, discloses the modular pool constructive design, according to claim 10, characterized by the fact that each wall panel comprises a rim (19, 20) along of one of the vertical sides of said central rectangular portion, said rim being bent at an angle different to 90° (shown in Fig. 2), in relation with said panel.

**As to claim 18**, Kastle, in view of Arp, discloses the modular pool constructive design, according to claim 11, characterized by the fact that each wall panel comprises a rim (19, 20) along one of the vertical sides of said central rectangular portion, said rim being bent at an angle different to 90° (shown in Fig. 2), in relation with said panel.

***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to HUNTER M. DREIDAME whose telephone number is (571)272-5177. The examiner can normally be reached on Monday - Friday 8am - 5pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Robert Canfield can be reached on (571)272-6840. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

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